

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation)	
Against:)	
)	
)	
JAMES KENNETH KEANEY, M.D.)	Case No. 800-2015-013948
)	
Physician's and Surgeon's)	
Certificate No. G 54015)	
)	
Respondent)	
_____)	

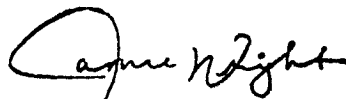
DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on December 2, 2016.

IT IS SO ORDERED: November 2, 2016.

MEDICAL BOARD OF CALIFORNIA



**Jamie Wright, JD, Chair
Panel A**

1 KAMALA D. HARRIS
Attorney General of California
2 JANE ZACK SIMON
Supervising Deputy Attorney General
3 GREG W. CHAMBERS
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8 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 800-2015-013948

11 **JAMES KENNETH KEANEY, M.D.**
12 **4557 Deborah Court**
13 **Union City, CA 94587**

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

14 **Physician's and Surgeon's Certificate No.**
G54015

15 Respondent.

16
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
18 entitled proceedings that the following matters are true:

19 PARTIES

20 1. Kimberly Kirchmeyer ("Complainant") is the Executive Director of the Medical
21 Board of California. She brought this action solely in her official capacity and is represented in
22 this matter by Kamala D. Harris, Attorney General of the State of California, by Greg W.
23 Chambers, Deputy Attorney General.

24 2. Respondent James Kenneth Keaney, M.D. ("Respondent") is representing himself in
25 this proceeding and has chosen not to exercise his right to be represented by counsel.

26 3. On or about November 19, 1984, the Medical Board of California issued Physician's
27 and Surgeon's Certificate No. G54015 to Respondent. The Physician's and Surgeon's Certificate
28

1 was in full force and effect at all times relevant to the charges brought in Accusation No. 800-
2 2015-013948, and expired on February 29, 2016.

3 JURISDICTION

4 4. Accusation No. 800-2015-013948 was filed before the Medical Board of California
5 ("Board"), Department of Consumer Affairs, and is currently pending against Respondent. The
6 Accusation and all other statutorily required documents were properly served on Respondent on
7 March 16, 2016.

8 5. Respondent failed to timely file his Notice of Defense contesting the Accusation. On
9 May 18, 2016, a Default Decision and Order was signed. On June 16, 2016, a Petition for
10 Reconsideration was filed by Respondent. On June 23, 2016, an Order Vacating and Setting
11 Aside Default Disciplinary Decision was signed.

12 6. A copy of Accusation No. 800-2015-013948 is attached as exhibit A and incorporated
13 herein by reference.

14 ADVISEMENT AND WAIVERS

15 7. Respondent has carefully read, and understands the charges and allegations in
16 Accusation No. 800-2015-013948. Respondent has also carefully read, and understands the
17 effects of this Stipulated Settlement and Disciplinary Order.

18 8. Respondent is fully aware of his legal rights in this matter, including the right to a
19 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
20 his own expense; the right to confront and cross-examine the witnesses against him; the right to
21 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
22 the attendance of witnesses and the production of documents; the right to reconsideration and
23 court review of an adverse decision; and all other rights accorded by the California
24 Administrative Procedure Act and other applicable laws.

25 9. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
26 every right set forth above.

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28 ///

1 CULPABILITY

2 10. Respondent admits the truth of each and every charge and allegation in Accusation
3 No. 800-2015-013948.

4 11. Respondent agrees that his Physician's and Surgeon's Certificate is subject to
5 discipline and he agrees to be bound by the Board's probationary terms as set forth in the
6 Disciplinary Order below.

7 CONTINGENCY

8 12. This stipulation shall be subject to approval by the Medical Board of California.
9 Respondent understands and agrees that counsel for Complainant and the staff of the Medical
10 Board of California may communicate directly with the Board regarding this stipulation and
11 settlement, without notice to or participation by Respondent. By signing the stipulation,
12 Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the
13 stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this
14 stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of
15 no force or effect, except for this paragraph, it shall be inadmissible in any legal action between
16 the parties, and the Board shall not be disqualified from further action by having considered this
17 matter.

18 13. The parties understand and agree that Portable Document Format ("PDF") and
19 facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and
20 facsimile signatures thereto, shall have the same force and effect as the originals.

21 14. In consideration of the foregoing admissions and stipulations, the parties agree that
22 the Board may, without further notice or formal proceeding, issue and enter the following
23 Disciplinary Order:

24 **DISCIPLINARY ORDER**

25 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G54015 issued
26 to Respondent James Kenneth Keaney, M.D. is revoked. However, the revocation is stayed and
27 Respondent is placed on probation for five (5) years on the following terms and conditions.

28 1. CONTROLLED SUBSTANCES - ABSTAIN FROM USE. Respondent shall abstain

1 completely from the personal use or possession of controlled substances as defined in the
2 California Uniform Controlled Substances Act, dangerous drugs as defined by Business and
3 Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not
4 apply to medications lawfully prescribed to Respondent by another practitioner for a bona fide
5 illness or condition.

6 Within fifteen (15) calendar days of receiving any lawfully prescribed medications,
7 Respondent shall notify the Board or its designee of the: issuing practitioner's name, address, and
8 telephone number; medication name, strength, and quantity; and issuing pharmacy name, address,
9 and telephone number.

10 If Respondent has a confirmed positive biological fluid test for any substance (whether or
11 not legally prescribed) and has not reported the use to the Board or its designee, Respondent shall
12 receive a notification from the Board or its designee to immediately cease the practice of
13 medicine. The Respondent shall not resume the practice of medicine until final decision on an
14 accusation and/or a petition to revoke probation. An accusation and/or petition to revoke
15 probation shall be filed by the Board within fifteen (15) days of the notification to cease practice.
16 If the Respondent requests a hearing on the accusation and/or petition to revoke probation, the
17 Board shall provide the Respondent with a hearing within thirty (30) days of the request, unless
18 the Respondent stipulates to a later hearing. A decision shall be received from the Administrative
19 Law Judge or the Board within fifteen (15) days unless good cause can be shown for the delay.
20 The cessation of practice shall not apply to the reduction of the probationary time period.

21 If the Board does not file an accusation or petition to revoke probation within fifteen (15)
22 days of the issuance of the notification to cease practice or does not provide Respondent with a
23 hearing within thirty (30) days of a such a request, the notification of cease practice shall be
24 dissolved.

25 2. ALCOHOL - ABSTAIN FROM USE. Respondent shall abstain completely from the
26 use of products or beverages containing alcohol.

27 If Respondent has a confirmed positive biological fluid test for alcohol, Respondent shall
28 receive a notification from the Board or its designee to immediately cease the practice of

1 medicine. The Respondent shall not resume the practice of medicine until final decision on an
2 accusation and/or a petition to revoke probation. An accusation and/or petition to revoke
3 probation shall be filed by the Board within fifteen (15) days of the notification to cease practice.
4 If the Respondent requests a hearing on the accusation and/or petition to revoke probation, the
5 Board shall provide the Respondent with a hearing within thirty (30) days of the request, unless
6 the Respondent stipulates to a later hearing. A decision shall be received from the Administrative
7 Law Judge or the Board within fifteen (15) days unless good cause can be shown for the delay.
8 The cessation of practice shall not apply to the reduction of the probationary time period.

9 If the Board does not file an accusation or petition to revoke probation within fifteen (15)
10 days of the issuance of the notification to cease practice or does not provide Respondent with a
11 hearing within thirty (30) days of a such a request, the notification of cease practice shall be
12 dissolved.

13 3. NOTICE OF EMPLOYER OR SUPERVISOR INFORMATION. Within seven (7)
14 days of the effective date of this Decision, respondent shall provide to the Board the names,
15 physical addresses, mailing addresses, and telephone numbers of any and all employers and
16 supervisors. Respondent shall also provide specific, written consent for the Board, respondent's
17 worksite monitor, and respondent's employers and supervisors to communicate regarding
18 respondent's work status, performance, and monitoring.

19 For purposes of this section, "supervisors" shall include the Chief of Staff and Health or
20 Well Being Committee Chair, or equivalent, if applicable, when the respondent has medical staff
21 privileges.

22 4. BIOLOGICAL FLUID TESTING. Respondent shall immediately submit to
23 biological fluid testing, at Respondent's expense, upon request of the Board or its designee.
24 "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair
25 follicle testing, or similar drug screening approved by the Board or its designee. Respondent shall
26 make daily contact with the Board or its designee to determine whether biological fluid testing is
27 required. Respondent shall be tested on the date of the notification as directed by the Board or its
28 designee. The Board may order a Respondent to undergo a biological fluid test on any day, at

1 any time, including weekends and holidays. Except when testing on a specific date as ordered by
2 the Board or its designee, the scheduling of biological fluid testing shall be done on a random
3 basis. The cost of biological fluid testing shall be borne by the Respondent.

4 During the first year of probation, Respondent shall be subject to fifty-two (52) to one
5 hundred four (104) random tests. During the second year of probation and for the duration of the
6 probationary term, up to five (5) years, Respondent shall be subject to thirty-six (36) to one
7 hundred four (104) random tests per year. Only if there has been no positive biological fluid tests
8 in the previous five (5) consecutive years of probation, may testing be reduced to one (1) time per
9 month. Nothing precludes the Board from increasing the number of random tests to the first-year
10 level of frequency for any reason.

11 Prior to practicing medicine, Respondent shall contract with a laboratory or service,
12 approved in advance by the Board or its designee, that will conduct random, unannounced,
13 observed, biological fluid testing and meets all the following standards:

14 (a) Its specimen collectors are either certified by the Drug and Alcohol Testing Industry
15 Association or have completed the training required to serve as a collector for the United
16 States Department of Transportation.

17 (b) Its specimen collectors conform to the current United States Department of
18 Transportation Specimen Collection Guidelines.

19 (c) Its testing locations comply with the Urine Specimen Collection Guidelines published
20 by the United States Department of Transportation without regard to the type of test
21 administered.

22 (d) Its specimen collectors observe the collection of testing specimens.

23 (e) Its laboratories are certified and accredited by the United States Department of Health
24 and Human Services.

25 (f) Its testing locations shall submit a specimen to a laboratory within one (1) business
26 day of receipt and all specimens collected shall be handled pursuant to chain of custody
27 procedures. The laboratory shall process and analyze the specimens and provide legally
28 defensible test results to the Board within seven (7) business days of receipt of the

specimen. The Board will be notified of non-negative results within one (1) business day and will be notified of negative test results within seven (7) business days.

(g) Its testing locations possess all the materials, equipment, and technical expertise necessary in order to test respondent on any day of the week.

(h) Its testing locations are able to scientifically test for urine, blood, and hair specimens for the detection of alcohol and illegal and controlled substances.

(i) It maintains testing sites located throughout California.

(j) It maintains an automated 24-hour toll-free telephone system and/or a secure on-line computer database that allows the respondent to check in daily for testing.

(k) It maintains a secure, HIPAA-compliant website or computer system that allows staff access to drug test results and compliance reporting information that is available 24 hours a day.

(l) It employs or contracts with toxicologists that are licensed physicians and have knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate laboratory biological fluid test results, medical histories, and any other information relevant to biomedical information.

(m) It will not consider a toxicology screen to be negative if a positive result is obtained while practicing, even if the Respondent holds a valid prescription for the substance.

Prior to changing testing locations for any reason, including during vacation or other travel, alternative testing locations must be approved by the Board and meet the requirements above.

The contract shall require that the laboratory directly notify the Board or its designee of non-negative results within one (1) business day and negative test results within seven (7) business days of the results becoming available. Respondent shall maintain this laboratory or service contract during the period of probation.

A certified copy of any laboratory test result may be received in evidence in any proceedings between the Board and Respondent.

If a biological fluid test result indicates Respondent has used, consumed, ingested, or administered to himself or herself a prohibited substance, the Board shall order respondent to

1 cease practice and instruct Respondent to leave any place of work where respondent is practicing
2 medicine or providing medical services. The Board shall immediately notify all of Respondent's
3 employers, supervisors and work monitors, if any, that Respondent may not practice medicine or
4 provide medical services while the cease-practice order is in effect.

5 A biological fluid test will not be considered negative if a positive result is obtained while
6 practicing, even if the practitioner holds a valid prescription for the substance. If no prohibited
7 substance use exists, the Board shall lift the cease-practice order within one (1) business day.

8 After the issuance of a cease-practice order, the Board shall determine whether the positive
9 biological fluid test is in fact evidence of prohibited substance use by consulting with the
10 specimen collector and the laboratory, communicating with the licensee, his or her treating
11 physician(s), other health care provider, or group facilitator, as applicable.

12 For purposes of this condition, the terms "biological fluid testing" and "testing" mean the
13 acquisition and chemical analysis of a Respondent's urine, blood, breath, or hair.

14 For purposes of this condition, the term "prohibited substance" means an illegal drug, a
15 lawful drug not prescribed or ordered by an appropriately licensed health care provider for use by
16 Respondent and approved by the Board, alcohol, or any other substance the Respondent has been
17 instructed by the Board not to use, consume, ingest, or administer to himself or herself.

18 If the Board confirms that a positive biological fluid test is evidence of use of a prohibited
19 substance, Respondent has committed a major violation, as defined in section 1361.52(a), and the
20 Board shall impose any or all of the consequences set forth in section 1361.52(b), in addition to
21 any other terms or conditions the Board determines are necessary for public protection or to
22 enhance Respondent's rehabilitation.

23 5. SUBSTANCE ABUSE SUPPORT GROUP MEETING.

24 Within thirty (30) days of the effective date of this Decision, Respondent shall submit to the
25 Board or its designee, for its prior approval, the name of a substance abuse support group which
26 he or she shall attend for the duration of probation. Respondent shall attend substance abuse
27 support group meetings at least once per week, or as ordered by the Board or its designee.
28 Respondent shall pay all substance abuse support group meeting costs.

1 The facilitator of the substance abuse support group meeting shall have a minimum of three
2 (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed
3 or certified by the state or nationally certified organizations. The facilitator shall not have a
4 current or former financial, personal, or business relationship with respondent within the last five
5 (5) years. Respondent's previous participation in a substance abuse group support meeting led by
6 the same facilitator does not constitute a prohibited current or former financial, personal, or
7 business relationship.

8 The facilitator shall provide a signed document to the Board or its designee showing
9 respondent's name, the group name, the date and location of the meeting, respondent's
10 attendance, and respondent's level of participation and progress. The facilitator shall report any
11 unexcused absence by respondent from any substance abuse support group meeting to the Board,
12 or its designee, within twenty-four (24) hours of the unexcused absence.

13 6. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within sixty (60) calendar
14 days of the effective date of this Decision, Respondent shall enroll in a professionalism program,
15 that meets the requirements of Title 16, California Code of Regulations ("CCR") section 1358.
16 Respondent shall participate in and successfully complete that program. Respondent shall
17 provide any information and documents that the program may deem pertinent. Respondent shall
18 successfully complete the classroom component of the program not later than six (6) months after
19 Respondent's initial enrollment, and the longitudinal component of the program not later than the
20 time specified by the program, but no later than one (1) year after attending the classroom
21 component. The professionalism program shall be at Respondent's expense and shall be in
22 addition to the Continuing Medical Education ("CME") requirements for renewal of licensure.

23 A professionalism program taken after the acts that gave rise to the charges in the
24 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
25 or its designee, be accepted towards the fulfillment of this condition if the program would have
26 been approved by the Board or its designee had the program been taken after the effective date of
27 this Decision.

28 Respondent shall submit a certification of successful completion to the Board or its

1 designee not later than fifteen (15) calendar days after successfully completing the program or not
2 later than fifteen (15) calendar days after the effective date of the Decision, whichever is later.

3 7. PSYCHIATRIC EVALUATION. Within thirty (30) calendar days of the effective
4 date of this Decision, and on whatever periodic basis thereafter may be required by the Board or
5 its designee, Respondent shall undergo and complete a psychiatric evaluation (and psychological
6 testing, if deemed necessary) by a Board-appointed board certified psychiatrist, who shall
7 consider any information provided by the Board or designee and any other information the
8 psychiatrist deems relevant, and shall furnish a written evaluation report to the Board or its
9 designee. Psychiatric evaluations conducted prior to the effective date of the Decision shall not
10 be accepted towards the fulfillment of this requirement. Respondent shall pay the cost of all
11 psychiatric evaluations and psychological testing.

12 Respondent shall comply with all restrictions or conditions recommended by the evaluating
13 psychiatrist within fifteen (15) calendar days after being notified by the Board or its designee.

14 Respondent shall not engage in the practice of medicine until notified by the Board or its
15 designee that Respondent is mentally fit to practice medicine safely. The period of time that
16 Respondent is not practicing medicine shall not be counted toward completion of the term of
17 probation.

18 8. PSYCHOTHERAPY. Within sixty (60) calendar days of the effective date of this
19 Decision, Respondent shall submit to the Board or its designee for prior approval the name and
20 qualifications of a California-licensed board certified psychiatrist or a licensed psychologist who
21 has a doctoral degree in psychology and at least five years of postgraduate experience in the
22 diagnosis and treatment of emotional and mental disorders. Upon approval, Respondent shall
23 undergo and continue psychotherapy treatment, including any modifications to the frequency of
24 psychotherapy, until the Board or its designee deems that no further psychotherapy is necessary.

25 The psychotherapist shall consider any information provided by the Board or its designee
26 and any other information the psychotherapist deems relevant and shall furnish a written
27 evaluation report to the Board or its designee. Respondent shall cooperate in providing the
28 psychotherapist any information and documents that the psychotherapist may deem pertinent.

1 Respondent shall have the treating psychotherapist submit quarterly status reports to the
2 Board or its designee. The Board or its designee may require Respondent to undergo psychiatric
3 evaluations by a Board-appointed board certified psychiatrist. If, prior to the completion of
4 probation, Respondent is found to be mentally unfit to resume the practice of medicine without
5 restrictions, the Board shall retain continuing jurisdiction over Respondent's license and the
6 period of probation shall be extended until the Board determines that Respondent is mentally fit
7 to resume the practice of medicine without restrictions.

8 Respondent shall pay the cost of all psychotherapy and psychiatric evaluations.

9 9. MEDICAL EVALUATION AND TREATMENT. Within thirty (30) calendar days
10 of the effective date of this Decision, and on a periodic basis thereafter as may be required by the
11 Board or its designee, Respondent shall undergo a medical evaluation by a Board-appointed
12 physician who shall consider any information provided by the Board or designee and any other
13 information the evaluating physician deems relevant and shall furnish a medical report to the
14 Board or its designee. Respondent shall provide the evaluating physician any information and
15 documentation that the evaluating physician may deem pertinent.

16 Following the evaluation, Respondent shall comply with all restrictions or conditions
17 recommended by the evaluating physician within fifteen (15) calendar days after being notified
18 by the Board or its designee. If Respondent is required by the Board or its designee to undergo
19 medical treatment, Respondent shall within thirty (30) calendar days of the requirement notice,
20 submit to the Board or its designee for prior approval the name and qualifications of a California
21 licensed treating physician of Respondent's choice. Upon approval of the treating physician,
22 Respondent shall within fifteen (15) calendar days undertake medical treatment and shall
23 continue such treatment until further notice from the Board or its designee.

24 The treating physician shall consider any information provided by the Board or its designee
25 or any other information the treating physician may deem pertinent prior to commencement of
26 treatment. Respondent shall have the treating physician submit quarterly reports to the Board or
27 its designee indicating whether or not the Respondent is capable of practicing medicine safely.
28 Respondent shall provide the Board or its designee with any and all medical records pertaining to

1 treatment, the Board or its designee deems necessary.

2 If, prior to the completion of probation, Respondent is found to be physically incapable of
3 resuming the practice of medicine without restrictions, the Board shall retain continuing
4 jurisdiction over Respondent's license and the period of probation shall be extended until the
5 Board determines that Respondent is physically capable of resuming the practice of medicine
6 without restrictions. Respondent shall pay the cost of the medical evaluation(s) and treatment.

7 10. VIOLATION OF PROBATION. Failure to fully comply with any term or condition
8 of probation is a violation of probation.

9 A. If respondent commits a major violation of probation as defined by section 1361.52,
10 subdivision (a), of Title 16 of the California Code of Regulations, the Board shall take one or
11 more of the following actions:

12 (1) Issue an immediate cease-practice order and order respondent to undergo a clinical
13 diagnostic evaluation to be conducted in accordance with section 1361.5, subdivision (c)(1), of
14 Title 16 of the California Code of Regulations, at respondent's expense. The cease-practice order
15 issued by the Board or its designee shall state that respondent must test negative for at least a
16 month of continuous biological fluid testing before being allowed to resume practice. For
17 purposes of the determining the length of time a respondent must test negative while undergoing
18 continuous biological fluid testing following issuance of a cease-practice order, a month is
19 defined as thirty (30) calendar days. Respondent may not resume the practice of medicine until
20 notified in writing by the Board or its designee that he or she may do so.

21 (2) Increase the frequency of biological fluid testing.

22 (3) Refer Respondent for further disciplinary action, such as suspension, revocation, or
23 other action as determined by the Board or its designee. (Cal. Code Regs., tit. 16, § 1361.52,
24 subd. (b).)

25 B. If Respondent commits a minor violation of probation as defined by section
26 1361.52, subdivision (c), of Title 16 of the California Code of Regulations, the Board shall take
27 one or more of the following actions:

28 (1) Issue a cease-practice order;

- (2) Order practice limitations;
- (3) Order or increase supervision of respondent;
- (4) Order increased documentation;
- (5) Issue a citation and fine, or a warning letter;
- (6) Order Respondent to undergo a clinical diagnostic evaluation to be conducted in accordance with section 1361.5, subdivision (c)(1), of Title 16 of the California Code of Regulations, at Respondent's expense;
- (7) Take any other action as determined by the Board or its designee. (Cal. Code Regs., tit. 16, § 1361.52, subd. (d).)

C. Nothing in this Decision shall be considered a limitation on the Board's authority to revoke Respondent's probation if he or she has violated any term or condition of probation. (See Cal. Code Regs., tit. 16, § 1361.52, subd. (e).) If Respondent violates probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

11. WORKSITE MONITOR FOR SUBSTANCE-ABUSING LICENSEE. Within thirty (30) calendar days of the effective date of this Decision, respondent shall submit to the Board or its designee for prior approval as a worksite monitor, the name and qualifications of one or more licensed physician and surgeon, other licensed health care professional if no physician and surgeon is available, or, as approved by the Board or its designee, a person in a position of authority who is capable of monitoring the respondent at work.

The worksite monitor shall not have a current or former financial, personal, or familial relationship with Respondent, or any other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the Board or its designee. If it is impractical for anyone but Respondent's employer to serve as the worksite monitor, this requirement may be waived by the Board or its designee, however, under no

1 circumstances shall Respondent's worksite monitor be an employee or supervisee of the licensee.

2 The worksite monitor shall have an active unrestricted license with no disciplinary action
3 within the last five (5) years, and shall sign an affirmation that he or she has reviewed the terms
4 and conditions of Respondent's disciplinary order and agrees to monitor Respondent as set forth
5 by the Board or its designee.

6 Respondent shall pay all worksite monitoring costs.

7 The worksite monitor shall have face-to-face contact with respondent in the work
8 environment on as frequent a basis as determined by the Board or its designee, but not less than
9 once per week; interview other staff in the office regarding Respondent's behavior, if requested
10 by the Board or its designee; and review respondent's work attendance.

11 The worksite monitor shall verbally report any suspected substance abuse to the Board and
12 Respondent's employer or supervisor within one (1) business day of occurrence. If the suspected
13 substance abuse does not occur during the Board's normal business hours, the verbal report shall
14 be made to the Board or its designee within one (1) hour of the next business day. A written
15 report that includes the date, time, and location of the suspected abuse; Respondent's actions; and
16 any other information deemed important by the worksite monitor shall be submitted to the Board
17 or its designee within 48 hours of the occurrence.

18 The worksite monitor shall complete and submit a written report monthly or as directed by
19 the Board or its designee which shall include the following: (1) Respondent's name and
20 Physician's and Surgeon's Certificate number; (2) the worksite monitor's name and signature; (3)
21 the worksite monitor's license number, if applicable; (4) the location or location(s) of the
22 worksite; (5) the dates Respondent had face-to-face contact with the worksite monitor; (6) the
23 names of worksite staff interviewed, if applicable; (7) a report of Respondent's work attendance;
24 (8) any change in Respondent's behavior and/or personal habits; and (9) any indicators that can
25 lead to suspected substance abuse by Respondent. Respondent shall complete any required
26 consent forms and execute agreements with the approved worksite monitor and the Board, or its
27 designee, authorizing the Board, or its designee, and worksite monitor to exchange information.
28 If the worksite monitor resigns or is no longer available, respondent shall, within five (5) calendar

1 days of such resignation or unavailability, submit to the Board or its designee, for prior approval,
2 the name and qualifications of a replacement monitor who will be assuming that responsibility
3 within fifteen (15) calendar days. If Respondent fails to obtain approval of a replacement monitor
4 within sixty (60) calendar days of the resignation or unavailability of the monitor, Respondent
5 shall receive a notification from the Board or its designee to cease the practice of medicine within
6 three (3) calendar days after being so notified. Respondent shall cease the practice of medicine
7 until a replacement monitor is approved and assumes monitoring responsibility.

8 12. SUPERVISION OF PHYSICIAN ASSISTANTS. During probation, Respondent is
9 prohibited from supervising physician assistants.

10 13. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules
11 governing the practice of medicine in California and remain in full compliance with any court
12 ordered criminal probation, payments, and other orders.

13 14. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations
14 under penalty of perjury on forms provided by the Board, stating whether there has been
15 compliance with all the conditions of probation.

16 Respondent shall submit quarterly declarations not later than ten (10) calendar days after
17 the end of the preceding quarter.

18 15. GENERAL PROBATION REQUIREMENTS.

19 Compliance with Probation Unit

20 Respondent shall comply with the Board's probation unit and all terms and conditions of
21 this Decision.

22 Address Changes

23 Respondent shall, at all times, keep the Board informed of Respondent's business and
24 residence addresses, email address (if available), and telephone number. Changes of such
25 addresses shall be immediately communicated in writing to the Board or its designee. Under no
26 circumstances shall a post office box serve as an address of record, except as allowed by Business
27 and Professions Code section 2021(b).

28 Place of Practice

Respondent shall not engage in the practice of medicine in Respondent's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

License Renewal

Respondent shall maintain a current and renewed California physician's and surgeon's license.

Travel or Residence Outside California

Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

In the event Respondent should leave the State of California to reside or to practice Respondent shall notify the Board or its designee in writing thirty (30) calendar days prior to the dates of departure and return.

16. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be available in person upon request for interviews either at Respondent's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

17. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or its designee in writing within fifteen (15) calendar days of any periods of non-practice lasting more than thirty (30) calendar days and within fifteen (15) calendar days of Respondent's return to practice. Non-practice is defined as any period of time Respondent is not practicing medicine in California as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event Respondent's period of non-practice while on probation exceeds eighteen (18)

1 calendar months, Respondent shall successfully complete a clinical training program that meets
2 the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary
3 Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

4 Respondent's period of non-practice while on probation shall not exceed two (2) years.

5 Periods of non-practice will not apply to the reduction of the probationary term.

6 Periods of non-practice will relieve Respondent of the responsibility to comply with the
7 probationary terms and conditions with the exception of this condition and the following terms
8 and conditions of probation: Obey All Laws; and General Probation Requirements.

9 18. COMPLETION OF PROBATION. Respondent shall comply with all financial
10 obligations (e.g., restitution, probation costs) not later than one hundred twenty (120) calendar
11 days prior to the completion of probation. Upon successful completion of probation,
12 Respondent's certificate shall be fully restored.

13 19. VIOLATION OF PROBATION. Failure to fully comply with any term or condition
14 of probation is a violation of probation. If Respondent violates probation in any respect, the
15 Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and
16 carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation,
17 or an Interim Suspension Order is filed against Respondent during probation, the Board shall have
18 continuing jurisdiction until the matter is final, and the period of probation shall be extended until
19 the matter is final.

20 20. LICENSE SURRENDER. Following the effective date of this Decision, if
21 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy
22 the terms and conditions of probation, Respondent may request to surrender his or her license.
23 The Board reserves the right to evaluate Respondent's request and to exercise its discretion in
24 determining whether or not to grant the request, or to take any other action deemed appropriate
25 and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent
26 shall within fifteen (15) calendar days deliver Respondent's wallet and wall certificate to the
27 Board or its designee and Respondent shall no longer practice medicine. Respondent will no
28 longer be subject to the terms and conditions of probation. If Respondent re-applies for a medical

license, the application shall be treated as a petition for reinstatement of a revoked certificate.

21. PROBATION MONITORING COSTS. Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED:

August 10, 2016

James Kenneth Keane, M.D.

JAMES KENNETH KEANEY, M.D.
Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California.

Dated:

October 10, 2016

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General

Meg W. Chambers

GREG W. CHAMBERS
Deputy Attorney General
Attorneys for Complainant

Exhibit A

Accusation No. 800-2015-013948

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2 JANE ZACK SIMON
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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO MARCH 16 2016
BY: [Signature] ANALYST

7
8 **BEFORE THE**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 800-2015-013948

13 **James Kenneth Keaney, M.D.**
14 **4557 Deborah Court**
15 **Union City, CA 94587**

ACCUSATION

16 **Physician's and Surgeon's Certificate**
17 **No. G54015**

Respondent.

18 Complainant alleges:

PARTIES

19 1. Kimberly Kirchmeyer ("Complainant") brings this Accusation solely in her official
20 capacity as the Executive Director of the Medical Board of California, Department of Consumer
21 Affairs ("Board").¹

22 2. On or about November 19, 1984, the Medical Board issued Physician's and Surgeon's
23 Certificate Number G54015 to James Kenneth Keaney, M.D. ("Respondent"). The Physician's
24 and Surgeon's certificate was in full force and effect at all times relevant to the charges brought
25 herein and expired on February 29, 2016. On March 2, 2016, an Interim Suspension Order was
26

27 ¹ The term "Board" means the Medical Board of California. "Division of Medical
28 Quality" shall also be deemed to refer to the Board. (Bus. & Prof. Code, section 2002).

1 issued pursuant to Government Code section 11529 with regard to Physician's and Surgeon's
2 Certificate Number G54015.

3 JURISDICTION

4 3. This Accusation is brought before the Board, under the authority of the following
5 laws. All section references are to the Business and Professions Code unless otherwise indicated.

6 4. Section 2227 of the Code provides that a licensee who is found guilty under the
7 Medical Practice Act may have his or her license revoked, suspended for a period not to exceed
8 one year, placed on probation and required to pay the costs of probation monitoring, or such other
9 action taken in relation to discipline as the Board deems proper.

10 5. Section 2234 of the Code provides:

11 "The Division of Medical Quality shall take action against any licensee who is charged
12 with unprofessional conduct. In addition to other provisions of this article, unprofessional
13 conduct includes, but is not limited to, the following:

14 "(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the
15 violation of, or conspiring to violate any provision of this chapter [Chapter 5, the Medical Practice
16 Act].

17 "... (f) Any act or conduct that would have warranted the denial of a certificate."

18 6. Section 2239 of the Code states:

19 "(a) The use or prescribing for or administering to himself or herself, of any controlled
20 substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic
21 beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to
22 any other person or to the public, or to the extent that such use impairs the ability of the licensee
23 to practice medicine safely or more than one misdemeanor or any felony involving the use,
24 consumption, or self-administration of any of the substances referred to in this section, or any
25 combination thereof, constitutes unprofessional conduct. The record of the conviction is
26 conclusive evidence of such unprofessional conduct.

27 "(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is
28 deemed to be a conviction within the meaning of this section. The Medical Board may order

1 discipline of the licensee in accordance with Section 2227 or the Medical Board may order the
2 denial of the license when the time for appeal has elapsed or the judgment of conviction has been
3 affirmed on appeal or when an order granting probation is made suspending imposition of
4 sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal
5 Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty,
6 or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or
7 indictment."

8 7. Section 820 of the Code states:

9 "Whenever it appears that any person holding a license, certificate or permit under this
10 division or under any initiative act referred to in this division may be unable to practice his or her
11 profession safely because the licentiate's ability to practice is impaired due to mental illness, or
12 physical illness affecting competency, the licensing agency may order the licentiate to be
13 examined by one or more physicians and surgeons or psychologists designated by the agency.
14 The report of the examiners shall be made available to the licentiate and may be received as direct
15 evidence in proceedings conducted pursuant to Section 822."

16 8. Code section 822 states:

17 "If a licensing agency determines that its licentiate's ability to practice his or her
18 profession safely is impaired because the licentiate is mentally ill, or physically ill affecting
19 competency, the licensing agency may take action by any one of the following methods:

20 "(a) Revoking the licentiate's certificate or license.

21 "(b) Suspending the licentiate's right to practice.

22 "(c) Placing the licentiate on probation.

23 "(d) Taking such other action in relation to the licentiate as the licensing agency in its
24 discretion deems proper.

25 "The licensing section shall not reinstate a revoked or suspended certificate or license until
26 it has received competent evidence of the absence or control of the condition which caused its
27 action and until it is satisfied that with due regard for the public health and safety the person's
28 right to practice his or her profession may be safely reinstated."

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Excessive Use of Drugs or Alcohol)**

3 9. Respondent James Kenneth Keaney, M.D. is guilty of unprofessional conduct and is
4 subject to disciplinary action under sections 2227, 2234, and 2239 of the Code in that Respondent
5 has used or self-administered alcohol to the extent, or in such a manner as to be dangerous or
6 injurious to the licensee, or to the public. The circumstances are as follows:

7 10. On or about May 11, 2015, the Board received a Health Facility Reporting Form
8 pursuant to Section 805 of the California Business and Professions Code ("805 report") from the
9 California Emergency Physicians Medical Group ("CEP"). The 805 report indicated that,
10 effective April 30, 2015, James Kenneth Keaney, M.D. was restricted from patient care for
11 suspected alcohol impairment based upon an informal investigation by the CEP peer review
12 committee.

13 11. On June 30, 2015, Respondent appeared at an interview with the Medical Board.
14 During the interview with Board Investigators, Respondent agreed to undergo a mental health
15 examination.

16 12. Subsequently, records were obtained and reviewed indicating the following
17 history:

- 18 • Respondent had a drunk-in-public conviction, which was later expunged.
- 19 • In 2007 Respondent was diagnosed with alcohol dependence while treating at the
20 Betty Ford Clinic from June 5, 2007 through July 4, 2007.
- 21 • In 2007 Respondent was diagnosed with alcohol dependence by his private
22 psychiatrist, G. S. N., M.D.²
- 23 • In 2011, Respondent was convicted of DUI.
- 24 • On December 1, 2014, R. D., M.D. diagnosed Respondent with alcohol use
25 disorder.
- 26 • In March 2015, CEP, Respondent's employer, asked Respondent to enter alcohol

27 ² Evaluators' names are kept confidential to protect their privacy but will be identified to
28 Respondent in discovery.

1 treatment as a condition of continued employment.

- 2 • Respondent admits to drinking six (6) days a week, a couple of glasses of wine
3 each day.

4 13. On January 8, 2016, the Board evaluator, S. K., M.D. conducted an examination
5 with Respondent, and reviewed Respondent's history of struggles with alcohol. Dr. K. concluded
6 that Respondent's conditions are serious and continuing, and that Respondent is a danger to
7 patients and the public due to alcohol use disorder, and is not able to practice medicine safely due
8 to his alcohol use disorder.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Impairment Due to Substance Abuse)**

11 14. Paragraphs 9 through 13 are incorporated herein by reference as if fully set forth.

12 15. Respondent James Kenneth Keaney, M.D. is subject to disciplinary action under
13 sections 820 and 822 of the Code in that Respondent is impaired and/or unable to safely practice
14 medicine as a result of his severe alcohol abuse disorder.

15 **PRAYER**

16 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
17 and that following the hearing, the Medical Board of California issue a decision:

18 1. Revoking or suspending Physician's and Surgeon's Certificate Number G54015,
19 issued to James Kenneth Keaney, M.D.;

20 2. Revoking, suspending or denying approval of James Kenneth Keaney, M.D.'s
21 authority to supervise physician assistants, pursuant to section 3527 of the Code;

22 3. Ordering James Kenneth Keaney, M.D., if placed on probation, to pay the Board the
23 costs of probation monitoring; and

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4. Taking such other and further action as deemed necessary and proper.

DATED: March 16, 2016


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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